

# The ABCs of UNDERSTANDING YOUR CHILD'S RIGHTS

Dear Parent: Your child has been referred for or is currently receiving special education services to provide for his or her individual educational needs. This document is a brief overview of a parent's procedural rights under the Individuals with Disabilities Education Act (IDEA) and is meant to be a resource guide, but it does not cover all provisions of IDEA. For a more detailed and specific explanation of your rights and responsibilities, please consult the law (IDEA). The Tennessee Department of Education/Division of Special Education, also publishes a more complete Parents' Rights Brochure entitled, *Rights of Children with Disabilities and Parent Responsibilities*, September 2001, which may be found at <http://www.state.tn.us/education/msped.htm>.

## INVITATION TO IEP MEETING

As a parent, you have a right to participate in the development of your child's Individualized Educational Program (IEP). Therefore, all meetings must be scheduled at a mutually agreed upon (by you and the school system) time and place. The school system must notify you at least ten (10) school days before an IEP meeting to ensure that you will have an opportunity to attend. When notifying you of an IEP meeting related to an incident of misconduct, the notification time may be reduced to as few as twenty-four (24) hours.

## YOUR RIGHT TO PRIOR WRITTEN NOTICE

You must be given written notice at least ten (10) school days before the school system:

- Proposes to initiate or change the identification, evaluation, or educational placement of your child or the provision of free appropriate public education to your child;
- Refuses to initiate or change the identification, evaluation, or educational placement of your child or the provision of a free appropriate public education to your child; or
- Refuses to amend your child's records or proposes to destroy unneeded records in accordance with the confidentiality requirements of the law.

The ten-day notification time may be reduced if you and the school system agree or in the case of an incident of misconduct.

The content of the notice must include:

- A description of the action proposed or refused;
- An explanation of why the school system proposes or refuses to take the action;
- A description of any options considered and the reasons why those options were rejected;
- A description of each evaluation procedure, test, record, or report used as a basis for the action;
- A description of any other factors relevant to the local school system's proposed or refused action;

- A statement that you have protections under the procedural safeguards; and
- Sources for you to contact to obtain assistance in understanding the notice.

## INFORMED WRITTEN PARENTAL CONSENT

The school system must get your informed consent before:

- Conducting an initial evaluation or reevaluation of your child;
- Initially placing your child in a special education program;
- Disclosing personally identifiable information to unauthorized persons, except for directory information where reasonable notice of disclosure is provided to you and you have not objected.

**Note:** If you refuse to consent to evaluation or reevaluation the school system may continue to pursue those evaluations by using due process procedures.

Your informed consent is not needed for:

- Reviewing existing data as part of an evaluation or a reevaluation;
- Administering a test or other assessment that is administered to all children unless consent is required of parents of all children; or
- Reevaluation, if the school system documents that it has taken reasonable measures to obtain your consent and you have failed to respond.

## STUDENT RECORDS

IDEA gives you the right to inspect and review any records directly relating to your child which are maintained by the school system or by a party acting for the school system. The school system must comply with your request to inspect and review all education records relating to the identification, evaluation, and placement of your child and the provision of a Free Appropriate Public Education (FAPE) to your child.

This request must be completed, without unnecessary delay and before any IEP meeting or hearing and in no case, more than forty-five (45) days after the request has been received.

**Your right to inspect and review your child's records includes:**

- The right to a response from the school system if you make a reasonable request for explanations and interpretations of the records;
- The right to request the school system to provide copies of the records, if failure to provide copies would effectively prevent you from exercising your right to inspect and review the records; and
- The right to have your representative (authorized in writing) inspect and review the records.

The school system may presume that you have the authority to inspect and review records relating to your child unless it has been advised that you do not have the authority under applicable Tennessee law governing such matters as guardianship, separation and divorce and has been provided a copy of the applicable document.

If any of your child's education records include information regarding other children, you shall have the right to inspect and review only the information relating to your own child or to be informed of that specific information.

The school system may charge a fee for copies of records which are made for you if the fee does not effectively prevent you from exercising your right to inspect and review those records.

If you believe that information in your child's education records is inaccurate or misleading or violates the privacy or other rights of your child, you may request the school system to amend the information. If you request the school system to amend your child's records, the school system must decide whether to amend the record and respond to you within ten (10) days of receipt of your request. If the school system refuses to amend your child's record, it shall inform you of the refusal and advise you of your right to a hearing conducted by an impartial hearing officer to challenge the information in your child's records. If, as a result of the hearing, it is decided that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of your child, the school system shall amend the information accordingly and provide written notice to you. If, as a result of the hearing, it is decided that the information is not inaccurate, misleading or otherwise in violation of the privacy or other rights of your child, the school system shall inform you of your right to place in your child's records a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the school system. Any explanation placed in your child's records must be maintained as long as the records or contested portions are maintained by the school system. If your child's records or the contested portions are disclosed by the school system to any party, the explanation must also be disclosed to the party.

Except for the disclosure of directory information (e.g., name, address, dates of attendance, etc.) where reasonable notice of disclosure is provided to you and you have not objected, the school system must get written consent from you before disclosing personally identifiable information from your child's records to unauthorized persons.

## **INDEPENDENT EDUCATIONAL EVALUATION (IEE)**

If you disagree with the school system's evaluation of your child, you have a right to seek an IEE. Each school system must have a procedure for providing an IEE at the request of parents.

An IEE must be provided to you at public expense and without unnecessary delay unless the school system:

- Initiates a hearing to show its evaluation is appropriate; or
- Demonstrates in a due process hearing that the evaluation presented by you did not meet the school system's evaluation criteria. If this is submitted, you still have the right to an IEE, but not at public expense.

When you request an IEE from the school system, the school system must provide you with information about where an IEE may be obtained and the evaluation criteria to be used.

Whenever you obtain an IEE, the criteria under which the assessment is obtained, including the location of the assessment and the qualifications of the examiner, must be the same as the criteria that the school system uses when it initiates an assessment. If the IEE meets school system criteria, (regardless of whether it is paid for by you or by public funds) the results must be considered by the school system in any decision made with respect to the provisions of FAPE to your child and may be presented as evidence at a due process hearing regarding your child.

**Note:** If a hearing officer requests an IEE as a part of a due process hearing, it shall be at public expense.

## **COMPLAINTS, MEDIATION & DUE PROCESS** **Administrative Complaints**

The Tennessee Department of Education encourages you to first attempt to resolve complaints regarding your child's educational program by contacting local school system officials. If you have contacted the principal of your child's school, your school system's Director of Special Education or the Director of Schools for your school system and your complaint is unresolved, you may file an Administrative Complaint with the Tennessee Department of Education/Division of Special Education (Division). To be processed and investigated by the Division, your complaint must allege a violation of a requirement of a state or federal law or regulation governing educational services to a child eligible for special education and provide specific information to support the allegation.

If you file an Administrative Complaint with the Division, a staff member will be assigned to conduct an impartial review of the facts and to recommend an objective resolution of the complaint based on the Division's procedures.

**An Administrative Complaint:**

- Must be in writing;
- Should be addressed to the Division;
- Must be signed by you (anonymous complaints will not be processed);
- Should be clear and concise in identifying the concern or the alleged violations; and
- Need not identify the specific law or regulation involved.

The Division must investigate and resolve all Administrative Complaints within sixty (60) calendar days from receipt of the written complaint. The sixty (60) day timeline may be extended by the Division for exceptional circumstances.

### **Mediation**

You and the school system have a right to participate in special education mediation conducted by the Tennessee Department of Education/Division of Special Education (Division) to resolve disputes involving identification, evaluation, or educational placement of your child or the provision of FAPE to your child. Mediation is a method of dispute resolution where both parties sit down with an impartial neutral party who helps them reach an agreement that is set forth in writing.

**The mediation process:**

- Is voluntary on the part of you and the school system;
- May not be used to deny or delay your right to a due process hearing, or to deny any of your other rights under IDEA; and
- Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

The Division shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

If you and the school system agree to mediate a dispute, a "Request for Mediation" form must be completed and signed by you and the school system and forwarded to the Division.

### **Due Process Hearing**

You and the school system have the right to an impartial due process hearing in order to settle disputes regarding the provision of a free appropriate public education to your child if he/she is eligible for special education or is suspected of being eligible for special education.

You or the school system may initiate a hearing on matters relating to the identification, evaluation or educational placement of your child with a disability, or the provision of FAPE for your child.

Reasons for requesting a Due Process Hearing may also include when your child is or is about to be:

- Denied identification, evaluation, entry or continuance in a program of special education appropriate to his/her condition and needs;
- Provided special education or related services which are inappropriate to his/her condition and needs;
- Denied needed special education or related services;
- Provided with special education or other education which is insufficient in quantity to satisfy the requirements of the law;
- Assigned to a program of special education when he/she is not eligible for special education;
- Denied his/her rights by having data collected, maintained or used which you believe to be inaccurate, misleading or otherwise in violation of the privacy rights of the child;
- Denied an evaluation requested by you;
- Improperly identified; or
- Placed in a setting, which is not the least restrictive environment.

When you request a hearing, the school system must inform you of the availability of mediation and of any free or low-cost legal services and other relevant services available in your area.

To request a Due Process Hearing, you must give the school system written notice of your request (there is a state Due Process Hearing request form on the internet at <http://www.state.tn.us/education/msped.htm>). The notice required must be in writing and include:

- The name of your child;
- The address of the residence of your child;
- The name of the school your child is attending;
- A description of the nature of the problem of your child relating to the proposed or refused initiation or change, including facts relating to the problem; and
- A proposed resolution of the problem to the extent known and available to you at the time.

### **Hearing Rights**

During a Due Process Hearing you have the right to:

- Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;
- Present evidence and confront, cross-examine, and compel the attendance of witnesses;

The Division of Special Education shall ensure that not later than forty-five (45) days after the receipt of a request for a hearing:

- A final decision is reached in the hearing; and
- A copy of the decision is mailed to the school system, the parents, and the Division.

**Note:** A hearing officer may grant specific extensions of time beyond forty-five (45) days at the request of either party.

At least five (5) business days prior to a Due Process Hearing you and the school system must disclose all evidence that you and/or the school system plan to present at the hearing, including all evaluations completed by that date and recommendations based on the evaluations.

### **Your Right to Challenge a Due Process Hearing Decision by Civil Action**

If you or the school system disagree with the findings and decision of an impartial Due Process Hearing Officer, you have the right to bring a civil action with respect to the complaint presented. The action may be brought in Chancery Court of Davidson County or in a federal district court of the United States.

### **Attorneys' Fees**

If you are the prevailing party in a Due Process Hearing, a court may subsequently award you attorney's fees. However, the court may limit or refuse your request for an award of attorney's fees under certain circumstances.

### **Your Child's Status During Proceedings**

Except in a case where your child is placed in an interim alternative educational setting for forty-five (45) days for weapons, drugs, or if your child has been determined dangerous to himself/herself and/or others by a hearing officer, your child must remain in his or her current educational placement during the pendency of any Due Process Hearing, unless the State or school system and you agree otherwise. The right to remain in a current educational placement is called "stay put." If the Due Process Hearing involves an application for initial admission to public school, your child, with your consent, must be placed in the public school until the completion of all the proceedings.

### **Expedited Due Process Hearings**

Parents may request an Expedited Due Process Hearing when they disagree with a determination that their child's behavior was not a manifestation of his/her disability or with any decision regarding disciplinary placement.

The school system may request an Expedited Due Process hearing if they consider a child dangerous in his/her current educational placement.

Expedited Due Process Hearings must be conducted by Due Process Hearing officers and written decisions mailed to parties within thirty (30) days of the local school system's receipt of the parent's request for the hearing. The decisions on Expedited Due Process Hearings may be challenged under the same rules as other Due Process Hearings.

## **DISCIPLINE PROCEDURES**

If your child is suspended or expelled from school, the school system must only continue to provide services to your child if the disciplinary removal constitutes a "change of placement."

### **Change of Placement for Disciplinary Removals**

For purposes of removal of a child with a disability from the child's current educational placement, a change of placement occurs if:

1. The removal is for more than ten (10) consecutive school days; or
2. The child is subjected to a series of removals that constitutes a pattern because they cumulate to more than ten (10) school days in a school year, and because of factors such as the length of each removal, the total amount of time the child is removed, and the proximity of the removals to one another.

A local school system need not provide services during periods of removal to a child eligible for special education who has been removed from his/her current educational placement for ten (10) school days or less in that school year if services are not provided to a child without disabilities who has been similarly removed.

If your child has been removed from his/her current placement for more than ten (10) school days in a school year, the local school system, for the remainder of the removals, must provide services to the extent necessary to enable your child to appropriately progress in the general curriculum and advance toward achieving the goals set out in his/her IEP.

Your child's IEP team shall determine the extent to which services are necessary to enable him/her to appropriately progress in the general curriculum and advance toward achieving the goals set out in his/her IEP if the child is removed because of behavior that has been determined not to be a manifestation of his/her disability.

### **Transfer of Special Education Records**

If the local school system initiates disciplinary procedures applicable to all children, the local school system shall ensure that the special education and disciplinary records of your child with a disability are transmitted for consideration by the person or persons making the final determination regarding the disciplinary action.

### **Interim Alternative Educational Settings**

The School System may place your child with a disability in an appropriate interim alternative educational setting for the same amount of time that a child without disabilities would be subject to discipline, but for not more than forty-five (45) days, if:

- Your child possesses a dangerous weapon at school or at a school function under the jurisdiction of the State or a local school system; or
- Your child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or at a school function under the jurisdiction of the State or local school system.

A Hearing Officer may order a change in the placement of your child with a disability to an appropriate interim alternative educational setting for not more than forty-five (45) days if the Hearing Officer, in an expedited due process hearing:

- Determines that the school system has demonstrated by substantial evidence that maintaining the current placement of your child is substantially likely to result in injury to your child or to others;
- Considers the appropriateness of your child's current placement;
- Considers whether the school system has made reasonable efforts to minimize the risk of harm in your child's current placement, including the use of supplementary aids and services; and
- Determines that the interim alternative educational setting that is proposed by school personnel who have consulted with your child's special education teacher is appropriate for your child.

**Functional Behavioral Assessments and Behavioral Intervention Plans**

Within ten (10) business days after either first removing your child for more than ten (10) school days in a school year or commencing a removal that constitutes a change of placement, the school system must conduct a functional behavioral assessment and implement a behavioral intervention plan. If your child already has a behavioral intervention plan, the IEP team shall meet to review the plan and its implementation, and modify the plan and its implementation as necessary to address your child's behavior.

**Exemption for Gifted Children**

Children identified as intellectually gifted are excluded from the provisions of 0520-1-9-.15 (Special Education Discipline Procedures) of the State Board of Education Rules and Regulations. However, children with a dual diagnosis that includes intellectually gifted shall be considered as children with a disability and may not be excluded from the requirements of 0520-1-9-.15 (Special Education Discipline Procedures) of the State Board of Education Rules and Regulations.

**TRANSFER OF RIGHTS AT AGE 18**

Tennessee law recognizes that a child has reached the age of majority or adulthood upon his/her eighteenth (18<sup>th</sup>) birthday. When your child reaches the age of eighteen (18) unless he/she has been determined to be incompetent under Tennessee law, all rights accorded to you under IDEA and the Family Educational Rights and Privacy Act (FERPA) transfer to your child.

Beginning at least one year before your child reaches the age of eighteen (18), your child's IEP must include a statement that you and your child have been informed that your child's rights under IDEA, if any, will transfer to your child when he/she reaches the age of eighteen (18).

**PARENTAL PLACEMENT IN PRIVATE SCHOOL**

If the public school system has made FAPE available to your child and you chose to place your child in a private school or facility, the public school system does not have to pay for the cost of education, including special education and related services for your child.

If you decide that the public school is not providing an appropriate education for your child and you wish to remove your child from the public school and enroll him/her in a private school at public expense, you must complete these steps:

**• Notice to the Public School System**

You must notify the public school system before you remove your child from public school. You must notify the public school system either at the most recent IEP meeting before removing your child, or in writing, at least ten (10) business days (including any holidays that occur on a business day) prior to the removal.

You must also tell the public school system why you disagree with the program that the public school has proposed or provided for your child and must state your intention to enroll your child in private school at public expense. If the public school system has informed you prior to your removing your child from public school of their intent to evaluate your child, you must make your child available for the evaluation.

**• Proof of Denial of FAPE to Hearing Officer**

You must prove to a Hearing Officer in a Due Process Hearing that the local school system did not make FAPE available to your child in a timely manner prior to the removal of your child and that the private placement is appropriate.

If you give proper notice to the public school system and prove your case at a Due Process Hearing, the Hearing Officer may require the local school system to reimburse you for the cost of the private school placement.

SCHOOL  
SYSTEM: \_\_\_\_\_

SCHOOL: \_\_\_\_\_

FOR QUESTIONS OR CONCERNS  
REGARDING YOUR CHILD'S SPECIAL  
EDUCATION SERVICES YOU MAY  
CONTACT YOUR LOCAL SCHOOL  
SYSTEM:

NAME: \_\_\_\_\_

PHONE: \_\_\_\_\_

ADDITIONAL RESOURCES:  
TN DEPARTMENT OF EDUCATION  
DIVISION OF SPECIAL EDUCATION

WEST TN REGIONAL RESOURCE  
CENTER: 731-421-5074

MIDDLE TN REGIONAL RESOURCE  
CENTER: 615-532-3258

EAST TN REGIONAL RESOURCE  
CENTER: 865-594-5691

NASHVILLE OFFICE:  
615-741-2851 OR 1-888-212-3162